

I. REMARKS

After the foregoing amendment, claim 2 has been deleted and claims 1 and 3-20 remain pending in the application. Claims 1, 19 and 20 have been amended. Specifically, to address the Examiner's objections to claims 19 and 20, claims 19 and 20 have been amended to correctly reflect dependency from claim 18 versus claim 19 as originally filed. Applicant submits that new matter has not been added to the application by way of the currently amended claims.

Claim Rejections Under 35 U.S.C. § 102(b)

The Examiner has rejected claims 1-3, 6, 8, 11 and 12 under 35 U.S.C. §102(b) as being anticipated by *Hunts* (U.S. Patent No. 6,525,298) (hereafter "*Hunts*"). Applicants respectfully traverse the Examiner's rejections. An anticipation rejection under 35 U.S.C. § 102(b) requires that the reference teach every element of the claim. *See* Manual of Patent Examining Procedure ("MPEP") § 2131 (8th ed., Rev. 2, May 2004).

Specifically, Applicants respectfully submit that the Examiner's analysis of the *Hunts* reference as compared to the elements of Applicants' Claim 1 is misguided. *Hunts* does not disclose or suggest a "drawer" or a "drawer frame" as is claimed by Applicants. According to The American Heritage[®] Dictionary of the English Language, Fourth Edition by Houghton Mifflin Company a drawer is defined as "a boxlike compartment...that can be pulled out and pushed in." Applicants' drawer/drawer frame is in accordance with such definition.

In contrast with Applicants' disclosure, no reference to a movable "drawer", or the like, is disclosed. *Hunts* only provides for a compartment housing having a fixed "tray" that is not capable of being pulled in/out or that is removable. However, to facilitate prosecution of

Applicants' application, Applicants have amended herein Claim 1 to incorporate the additional limitation of a food tray removably disposed within the drawer frame. The *Hunts* reference fails to disclose or suggest such limitations. Therefore, *Hunts* fails to anticipate all of the elements of Applicants' claimed subject matter.

Applicants respectfully submit that the Examiner's comments and rejections in reference to *Hunts* are now rendered moot for at least the reasons addressed above. Applicants respectfully request the Examiner reconsider and withdraw these rejections and allow independent claim 1. Applicants further submit that because dependent Claims 3, 6, 8, 11 and 12 depend from allowable Claim 1 they are likewise allowable and request that rejection of these claims under 35 U.S.C. §102(b) also be withdrawn.

The Examiner has rejected claims 1 and 7 under 35 U.S.C. §102(b) as being anticipated by *Koch* (U.S. Patent No. 574,336) (hereafter "*Koch*"). Applicant respectfully traverses the Examiner's rejections. As stated above, an anticipation rejection under 35 U.S.C. § 102(b) requires that the reference teach every element of the claim. See Manual of Patent Examining Procedure ("MPEP") § 2131 (8th ed., Rev. 2, May 2004).

As addressed above in response to the *Hunts* rejection, Applicants have amended herein Claim 1 to incorporate the additional limitation of a food tray removably disposed within the drawer frame. The *Koch* reference also fails to disclose or suggest such limitations. Therefore, *Koch* fails to anticipate all of the elements of Applicants' claimed subject matter.

Applicants respectfully submit that the Examiner's comments and rejections in reference to *Koch* are now rendered moot for at least the reasons addressed above. Applicants respectfully request the Examiner reconsider and withdraw these rejections and allow independent Claim 1.

Applicants further submit that because dependent Claim 7 depends from allowable Claim 1 it is likewise allowable and also request that rejection of this claim under 35 U.S.C. §102(b) be withdrawn.

Claim Rejections Under 35 U.S.C. § 103(a)

The Examiner rejected Claims 4, 5, 9 and 10 under 35 U.S.C. §103(a) as being unpatentable over *Hunts* in view of *Roberts et al.* (U.S. Patent No. 2,719,770) (hereafter "*Roberts*"). The Examiner states that *Hunts* discloses a magnetic latch mechanism, but not the latch mechanism claimed in claims 4 and 5. The Examiner argues that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the *Hunts* apparatus with the latching mechanism of *Roberts* as an available item used for its stated and intended purpose. It was also obvious that the probe could have been placed on the door or side rails, as a matter of design choice." See *Office Action* § 11, pg. 5. The Applicants respectfully traverse these rejections. A rejection under 35 U.S.C. § 103(a) requires that the Examiner establish a *prima facie* case of obviousness. The Examiner must show that 1) there is some suggestion or motivation, to modify the reference or to combine reference teachings; 2) there is a reasonable expectation of success; and 3) the prior art references teach or suggest all the claim limitations. Moreover, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure. See MPEP § 2142 (8th ed., Rev. 2, May 2004) (citing *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991)). It is not appropriate for the Examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. See MPEP § 2144.03 (8th ed., Rev. 2, May 2004).

None of the references cited by the Examiner teach or suggest Applicants invention. Applicants have amended independent Claim 1. Among other things, Claim 1 now includes a food tray removably disposed within the drawer frame. The *Hunt* and *Roberts* references, neither independently nor in combination, fail to teach or suggest this limitation. Applicants submit that because dependent Claims 4, 5, 9 and 10 depend from allowable Claim 1 they are likewise allowable and request that rejection of these claims under 35 U.S.C. §103(a) be withdrawn.

The Examiner rejected Claims 13-15 and 18 under 35 U.S.C. §103(a) as being unpatentable over *Koch* in view of *Shei et al.* (U.S. Patent No. 6,644,298) (hereafter "*Shei*"). The Examiner states that *Koch* does not disclose a food tray but that *Shei* discloses an oven including removable trays for warming food. The Examiner argues that "it would have been obvious to one of ordinary skill in the art to move the *Koch* drawer apparatus to a location above the heating source." Applicants respectfully disagree.

Specifically, the apron (9) utilized in *Koch* is designed as a surface for holding and retaining soot and other materials that are scraped and cleaned from the flue of the oven of *Koch*. It is apparent that the apron (9) (i.e., a drawer apparatus) of *Koch* is not designed to, nor is it disclosed, contemplated or suggested that any type of food(s) would be placed on the apron for cooking. Moreover, nor is it disclosed, contemplated or suggested by *Koch* that a food tray be utilized on the apron. Therefore, *Koch* teaches away from using a removable food tray because soot and other materials would fall into a food and food tray if implemented as argued by the Examiner.

Applicants' amendments, in conjunction with the arguments presented above specifically render *Koch* in view of *Shei* unobvious. Therefore, Applicants respectfully submit that the Examiner's combination of *Koch* with *Shei* rejections are now moot and request allowance of independent claims 14 and 18. In addition, claim 15 is a dependent claim which depends from allowable independent claim 14. As such, dependent claim 15 includes all the limitations of independent claim 14 and is allowable over the cited prior art on the grounds as discussed above.

The Examiner rejected claims 16, 17, 19 and 20 under 35 U.S.C. §103(a) as being unpatentable over *Koch* in view of *Shei* and further in view of *Roberts*. The Examiner argues that "it would have been obvious to one of ordinary skill in the art to modify *Koch* in view of *Shei* et al apparatus with the latching mechanism or *Roberts* as an available item used for its stated and intended purpose. It was also obvious that the probe could have been placed on the door of the side rails, as a matter of design choice." Applicants respectfully disagree in light of the arguments presented above regarding *Koch*'s teaching away of using the apron for placement of food or food containers.

Therefore, the Examiner's combination of *Koch* in view of *Shei* and further in view of *Roberts* rejections are now moot and request allowance of dependent claims 16, 17, 19 and 20.

II. CONCLUSION

Applicants respectfully submit that all issues and rejections have been fully addressed, that Claims 1 – 20 are allowable, and that the case should be advanced to issuance.

The Applicants encourage the Examiner to call the undersigned at the telephone number indicated below if the Examiner wishes to discuss the claims or has any questions. Applicant

believes that no fees are due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account Number 010657 of AKIN GUMP STRAUSS HAUER & FELD, LLP.

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Respectfully submitted,



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